

## Federal Trade Commission

## § 322.4

approved by, or otherwise associated with:

- (i) The United States government,
  - (ii) Any governmental homeowner assistance plan,
  - (iii) Any Federal, State, or local government agency, unit, or department,
  - (iv) Any nonprofit housing counselor agency or program,
  - (v) The maker, holder, or servicer of the consumer's dwelling loan, or
  - (vi) Any other individual, entity, or program;
- (4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;
- (5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;
- (6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;
- (7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;
- (8) That the consumer will receive legal representation;
- (9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;
- (10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;
- (11) The total cost to purchase the mortgage assistance relief service; or
- (12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;

(c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, "competent and reliable evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

### § 322.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) *Disclosures in All General Commercial Communications*—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) "(Name of company) is not associated with the government, and our service is not approved by the government or your lender."

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in § 322.2(i)(2) through (6), "Even if you accept this offer and use our service, your lender may not agree to change your loan."

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading "IMPORTANT NOTICE," which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement "Before using

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this service, consider the following information.”

(b) *Disclosures in All Consumer-Specific Commercial Communications*—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) “You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.” For the purposes of this paragraph, the amount “you will have to pay” shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) “(Name of company) is not associated with the government, and our service is not approved by the government or your lender.”

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in § 322.2(i)(2) through (6), “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading “IMPORTANT NOTICE,” which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement “Before using this service, consider the following information” and, in telephone communications, must be made at the beginning of the call.

(c) *Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other*

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*Communications*—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that “If you stop paying your mortgage, you could lose your home and damage your credit rating.”

EFFECTIVE DATE NOTE: At 75 FR 75140, Dec. 1, 2010, § 322.5 was added, effective January 31, 2011.

## § 322.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: “This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 322.4(b)(1)] for our services.” The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: “IMPORTANT NOTICE: Before buying this service, consider the following information.” The heading must be in bold face font that is two point-type larger than the font size of the required disclosure; or

(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer’s dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer’s current mortgage loan and the terms, conditions, and limitations associated with the consumer’s mortgage loan if he or she accepts the dwelling loan holder’s or

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servicer's offer, including but not limited to differences in the loan's:

- (i) Principal balance;
- (ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;
- (iii) Amount and number of the consumer's scheduled periodic payments on the loan;
- (iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;
- (v) Amount of any delinquent payments owing or outstanding;
- (vi) Assessed fees or penalties; and
- (vii) Term

(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: "IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER." The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.

(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of this offer, including but not limited to:

- (1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and
- (2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.

### § 322.6 Assisting and facilitating.

It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.

### § 322.7 Exemptions.

(a) An attorney is exempt from this part, with the exception of § 322.5, if the attorney:

- (1) Provides mortgage assistance relief services as part of the practice of law;
- (2) Is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer's dwelling is located; and

(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section is also exempt from § 322.5 if the attorney:

- (1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and
- (2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

### § 322.8 Waiver not permitted.

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

### § 322.9 Recordkeeping and compliance requirements.

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

(1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;

(2) Copies of all written communications between the provider and any consumer occurring prior to the date on which the consumer entered into an agreement with the provider for any mortgage assistance relief service;

(3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;

(4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including websites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in § 322.5 of this rule;